

SECTION: REMARKS

This reply is submitted pursuant to 35 U.S.C. §132 and 37 C.F.R. §1.111. The Office Action was carefully considered by the undersigned attorney and applicant. Reconsideration of the application is respectfully requested.

1. Summary of the Office Action.

Claims 1-5, 7, 9, 10 and 13-15 were pending.

Claims 1-3 and 7 stand rejected under 35 U.S.C §102(b) over Donovan (171,002)

Claims 1-3 and 7 stand rejected under 35 U.S.C §102(b) over Peterson et al (6,067,669)

Claims 1-3, 7, 9, 10 and 13 stand rejected under 35 U.S.C §102(b) over Killham (6,088,844)

Claims 4 and 5 stand rejected under 35 U.S.C §103(a) over Donovan in view of Williams (4,232,407).

Claim 11 stands rejected under 35 U.S.C §103(a) over Killham in view of Hartmann et al (DE 4434544 C1).

Claim 14 stands rejected under 35 U.S.C §103(a) over Killham in view of Williams.

Claim 15 stands rejected under 35 U.S.C §103(a) over Killham

2. Discussion.

The **present invention**, in general, relates to an evidence collection device which can be located within the drain outlet of a bath, shower, wash basin or the like to collect evidence which would otherwise be carried with the waste water through the drain outlet. After the basin has been drained of water, the device is closed and sealed to trap the collected evidence. The sealed device is then removed and sent to a suitable laboratory for examination and testing of the collected evidence. To be suitable for evidence collection, the device must be able to: (1) collect the evidence, (2) contain the collected evidence, and (3) be transported (while containing the collected evidence).

The references applied by the examiner describe arrangements which do not satisfy all of these criteria. The **Donovan** sink sealer arrangement is not readily transportable as the strainer plate (a) is intended to be "secured to the bottom of sink, and cemented all around its outer rim" (column 1, lines 16-18). If the device were used to collect evidence, the collected evidence would need to be removed from the device to allow it to be transported to the laboratory. Such removal increases the risk of loss, damage or contamination of the collected evidence. Likewise, the **Peterson et al.** replacement drain plug is adapted to be permanently fitted in a bathtub (column 1, lines 56-60), not to an arrangement that is readily removable. It will not allow safe, convenient transportation of evidence. In the **Killham** pet bath drain stopper 10, debris must pass through slot/apertures 25/33 *before* entering the housing 20. The slots/apertures would act as a coarse filter, restricting the entry of debris into the housing. As a consequence, important evidence may fail to enter the housing and so may be lost or contaminated. In summary, the references all fail to disclose devices suitable for use as evidence collection devices.

In this reply, applicant has amended claims 1, 10 14 and 15 to clarify and emphasize the distinctions between the claimed invention and the applied prior art. These claims require a **removable** housing and also, in use, must **collect** particulate matter, **contain** that matter **and** be adapted for **transport**. Specific claims are discussed further below.

Claim 1. This claim was rejected under 35 USC 102(b) as being anticipated by Donovan, 35 USC 102(e) over Peterson et al., and 35 USC 102(e) over Killham. The claim is amended to patentably distinguish and limit over each of these references by defining the invention to require that the housing be adapted to be **removably** received in a basin outlet whereby the device may **capture, contain and transport** evidence. As discussed above, this structure and function is not shown, suggested or made obvious by the references, either alone or in combination with each other. And, these differences are patentably significant because the amended elements relate to functional advantages in evidence collection. It is submitted that this amendment patentably avoids the applied art. Withdrawal of the rejection is requested.

Claim 10. This dependent methodology claim was rejected under 35 USC 102(e) as being anticipated by Killham. The claim is amended to patentably distinguish and limit over Killham by defining the method of using the device of claims 1-9 to require that the device be removably located in a basin, be **open to collect and retain** evidence matter, be removed with the retained matter, and be **removed for transport** to another location for analysis. This structure and function is not shown, suggested or made obvious by Killham, either alone or in combination with the other cited references, and is patentably significant over and above amended claim 1 above. In addition to the distinctions discussed above with respect to claim 1, Killham also does not have an open top to ensure complete entry of material into the housing. Withdrawal of the rejection is requested.

Claim 13. This claim was rejected under 35 USC 102(e) as being anticipated by Killham. Killham does not meet each and every element set forth in the claim. The claim as previously presented

requires a flexible liner, which is not shown or suggested by Killham. The examiner held that Andrews (USP 3,402,407) disclosed a liner in the 7/13/04 Office Action. Firstly, Applicant disagrees that the mounting/sealing base 18 of Andrews is a liner. Referring to column 2, lines 38-40, and as shown in Figures 2 and 4 the base is constructed and arranged to function merely as a gasket between the cap 28 and the sink 16. Secondly, assuming that the seal base could function as an evidence collection liner, a person of ordinary skill in the art would not be motivated to combine it with the device of Killham. There is no express suggestion to do so in either Killham or Andrews. And, Killham is directed to reducing the level of fear and anxiety in bathing animals (column 3, lines 5-16). Placement of an extensive liner in the bottom of a bathing tub along with the Killham stopper would have the opposite effect. As the reference relied upon does not describe, suggest or render obvious all of the elements of the claim, the claim as previously submitted is patentable and withdrawal of this rejection is warranted.

Claim 14. This claim was rejected under 35 USC 103(a) as being obvious over Killham in view of Williams. The claim is amended to patentably distinguish and limit over these references by defining the invention to require all of the elements of amended claim 1, and additionally that the housing is constructed of **rubber** or a rubber-like material and that it have an opening which is **unobstructed** at its open top. This structure and function is not shown, suggested or made obvious by Killham or Williams. Killham (and Donovan and Peterson et al. as well) disclose rigid housings intended to be substantially permanently placed. Williams connects with the permanent sink itself. Killham has a completely closed top and Peterson et al. has a top with a stem 16 taking up a substantial portion of the opening (see top of lid/stopper 50)/ These differences are patentably significant because the amended elements relate to advantages of the invention.

Applicant's elastic housing both creates a tight seal for preservation of all evidentiary material and is easy to insert and remove for transport of the evidence. The unobstructed open top of the housing also facilitates collection of maximum material. It is submitted that this amendment clearly indicates a narrower interpretation than that of the original claim, which interpretation clearly patentably avoids the applied art. Withdrawal of the rejection is requested.

Claim 15. This method claim was rejected under 35 USC 103(a) as being obvious over Killham. The claim is amended to patentably distinguish and limit over Killham by also defining the invention to require that the housing is constructed of **rubber** or a rubber-like material and that it have an opening which is **unobstructed** at its open top. This structure and function is not shown, suggested or made obvious by Killham for the reasons discussed above in connection with claim 14. It is submitted that this amendment clearly indicates a narrower interpretation than that of the original claim, which interpretation clearly patentably avoids the applied art. Withdrawal of the rejection is requested.

Remaining Claims. The remaining dependent claims each adds at least one limitation to the elements of its base claim, and is therefore deemed to be allowable with such base and any intervening claim, at least for this reason.

Telephone Restriction Requirement. In reviewing his file for this Reply, Applicant's attorney discovered notes of a telephone conference with the examiner held on 10/29/03 regarding a telephone restriction requirement. The notes indicated a discussion regarding Group 1 containing claims 1-9 and 12 directed to a device and Group 2 containing claims 10 and 11 directed to a

method. In the conference, this attorney asked for time to discuss the requirement with applicant prior to making a telephone election. Apparently, no return call for an election was made.

Applicant's attorney apologizes for this oversight. No written restriction requirement is of record.

In the event that restriction is required at this point, applicant would welcome the examiner's telephone call.

3. Conclusion.

The claims pending after this amendment are believed to be patentable for the reasons stated above. The amendments are believed to be supported by the specification, claims and drawings as filed. It is believed that this case is now in a condition for allowance. Reconsideration and favorable action are respectfully requested.

Should the Examiner believe that telephone communication would advance the prosecution of this case to finality, he is invited to call at the number below.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time under 37 CFR 1.136(a), provided a Petition is not submitted separately.

Please charge any fee due not paid by a check or credit card provided herewith, and/or charge any underpayment in any fee, and/or credit any overpayment in fee, to Deposit Account No. 19-2381.

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TOTAL claims remaining over that previously paid for:	None	\$0
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	SUM claim fees:	\$0
EXTENSION fees:		\$60
OTHER fees:		\$0
	<u>TOTAL AMOUNT (if any)</u>	\$60
<input type="checkbox"/> Paid by enclosed check.		
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Respectfully submitted,



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